IN THE COURT OF APPEALS OF IOWA

No. 23-0727
Filed February 21, 2024

**IN RE THE MARRIAGE OF JULIE ANN COOK
AND MATTHEW WAYNE COOK**

**Upon the Petition of
JULIE ANN COOK,**
Petitioner-Appellant,

**And Concerning
MATTHEW WAYNE COOK,**
Respondent-Appellee.

Appeal from the Iowa District Court for Muscatine County, Tamra Roberts, Judge.

Petitioner appeals the district court decree of modification concerning child support. **AFFIRMED AS MODIFIED AND REMANDED WITH INSTRUCTIONS.**

Andrew B. Howie of Shindler, Anderson, Goplerud & Weese, P.C., West Des Moines, for appellant.

Joseph C. Pavelich of Spies & Pavelich, Iowa City, for appellee.

Considered by Bower, C.J., and Schumacher and Langholz, JJ.

SCHUMACHER, Judge.

Julie Stoneking, formerly known as Julie Cook, appeals the district court order modifying her dissolution decree requiring her to pay $573.41 in monthly child support to her ex-husband, Matthew Cook. Stoneking argues that as the parent with physical care of the child she cannot be obligated to pay child support to the noncustodial parent.

I. Background Facts and Prior Proceedings

In 2014, Stoneking and Cook reached a stipulation to resolve the issues pending as part of their dissolution of marriage proceedings. The district court adopted the stipulation and granted the parties joint legal custody and joint physical care of their two children, G.C., born in 2003, and B.C., born in 2007. Cook was ordered to pay $36.66 per month in child support and maintain health insurance for the children. Stoneking and Cook agreed to share specific expenses for the children as designated in the stipulation on an equal basis. Under the parenting schedule, Cook had the children five out of fourteen overnights in a two-week period. The parties agreed that they would each have a two-week period with the children during the summer and agreed to specific holiday visitation.

In 2018, Stoneking petitioned to modify the decree. She requested that the court modify Cook's parenting time and grant her physical care of B.C.[1] Citing to B.C.'s special needs, the court granted Stoneking physical care of B.C. The court did not alter the parenting schedule or Cook's child support obligation.

[1] Stoneking did not seek to alter the custodial or physical care arrangement in regard to G.C. As such, the parties maintained joint physical care of G.C. after the 2018 modification.

In 2022, Stoneking again petitioned the court, requesting modification of Cook's child support obligation. The parties' oldest child, G.C., was no longer eligible for child support and the incomes of both parties had changed.[2] Stoneking had an annual income of $120,600 and Cook had an income of $50,487.99. Stoneking also alleged that Cook had failed to maintain health insurance for the children and failed to pay his portion of the shared expenses. She filed a rule to show cause at the same time as her modification petition on Cook's financial obligations.

On the day of trial, the parties recited an agreement into the record related to the pending rule to show cause, in which Cook would pay Stoneking $2811.56 in outstanding expenses and $2200 in attorney fees incurred by Stoneking as a result of the contempt proceeding. The parties stipulated as to their incomes and the cost for health insurance for the youngest child. The issues remaining for court determination were whether there should be a child support modification, and if so, the amount of child support to be paid.

Neither party called witnesses nor testified at trial. The parties stipulated to admission of exhibits and counsel made arguments to the court. The court ordered Stoneking to pay Cook $573.41 in monthly child support. The court, in determining the child support calculation, treated the parties as if they had joint physical care. Stoneking appeals.

[2] Neither the original decree nor the 2018 modified decree contained a step-down computation of child support for when the oldest child no longer qualified for child support.

II. Standard of Review

Modification requests are in equity, and we review them de novo. *In re Marriage of Smith*, 501 N.W.2d 558, 560 (Iowa Ct. App. 1993). We give the findings of the district court weight, especially when considering witness credibility, but we are not bound by these findings. *Id.* And "the district court has reasonable discretion in determining whether modification is warranted and such discretion will not be disturbed on appeal unless there is a failure to do equity." *Id.*

III. Discussion

Stoneking requests that the district court modification order be vacated and Cook be ordered to pay child support of $326.50 per month. She also asks that the provision requiring the parties to each pay half of the expenses be eliminated, except that Stoneking pay the first $250 of uncovered medical expenses with all subsequent uncovered medical expenses paid sixty-nine percent by Stoneking and thirty-one percent by Cook. Stoneking asks that these changes be made retroactive to three months after the service of her modification petition on Cook. Therefore, she requests the child support be retroactive to August 28, 2022. Finally, Stoneking requests appellate attorney fees.

A. Modification of Child Support

The district court ordered Stoneking to pay Cook $573.41 per month in child support based on a joint physical care formula. Stoneking argues this was in error and the court had no authority to order her to pay child support to the noncustodial parent. We agree. Iowa's child support framework does not allow a court to order a custodial parent to pay child support to a noncustodial parent. *Compare* Iowa

Ct. R. 9.14(2), *with* Iowa Ct. R. 9.14(3) (explaining when and how to calculate child support obligations under different formulas).

Child support is determined by the guidelines set out in Chapter 9 of the Iowa Court Rules. These guidelines include directions for determining child support when one parent has physical care and when the parents have joint physical care. Iowa Ct. R. 9.14(2), (3). The guidelines are flexible at times:

> Under the law there is a rebuttable presumption that the amount of child support which would result from the application of the guidelines is correct. The court cannot vary the amount of the child support without a written finding that the guidelines would be unjust or inappropriate under specific criteria.

In re Marriage of Powell, 474 N.W.2d 531, 533 (Iowa 1991).

Modification of child support obligations is possible once there has been a substantial change in circumstances. Iowa Code § 598.21C(1) (2022); *In re Marriage of Walters*, 575 N.W.2d 739, 741 (Iowa 1998). This can include "[c]hanges in the employment, earning capacity, income, or resources of a party," and "[c]hanges in the number or needs of dependents of a party." Iowa Code § 598.21C(1). It is undisputed that the parties' oldest child has reached the age of eighteen and will no longer be the subject of custodial and support orders, and both parties agree that their incomes have changed. We determine that Stoneking met her burden for modification based on these grounds.

Under the original decree, child support was determined using the joint physical care formulation. But in 2018, Stoneking was granted physical care of B.C.[3] The continued use of the joint physical care formula cannot be justified when

[3] This ruling was not appealed by either party.

the parties no longer have joint care. *Compare* Iowa Ct. R. 9.14(2), *with* Iowa Ct. R. 9.14(3) (explaining when and how to calculate child support obligations with different formulas based on custody). Stoneking has physical care, and the formula in rule 9.14(2) should be used. *See* Iowa Ct. R. 9.14(2). When one parent has physical care, the guidelines do not contemplate the parent with physical care paying support to the other parent. Rule 9.14(3) specifies it should be used "[i]n cases of court-ordered joint (equally shared) physical care . . ." Since Stoneking has physical care, the circumstances do not justify the use of rule 9.14(3). The guidelines also contain discussion of the "custodial" and "noncustodial" parent that indicates an expectation the noncustodial parent provides support.[4]

But when one parent has physical care and the noncustodial parent has significant parenting time, their child support obligations may be reduced in accordance with the number of overnights spent caring for the children in a year by an extraordinary visitation credit. Iowa Ct. R. 9.9. Noncustodial parents that care for their child for between 128 and 147 overnights are entitled to a fifteen percent credit on their support obligations. *Id.* Despite the change in the custodial designation, Cook has B.C. five out of every fourteen overnights. Based on the parenting schedule, Cook has B.C. for approximately 138 overnights in a year, and he should receive a fifteen percent credit. *See id.*

Stoneking calculated the amount Cook would owe under these circumstances.[5] Using the formula in rule 9.14(2), where one parent is the

[4] "[T]he noncustodial parent will receive a credit to the noncustodial parent's share of the basic support obligation . . . ." Iowa Ct. R. 9.9.

[5] To the extent that Cook argues if he is ordered to pay child support, we should deviate from the child support guidelines amount to zero, we determine he has

custodial parent, and accounting for a fifteen percent extraordinary visitation credit, Cook would have a monthly support obligation of $326.50.[6] We determine Cook is responsible for child support in this amount.[7]

B. Retroactivity of Support

Stoneking argues the change in the child support obligation should be made retroactive to three months after her petition for modification was served on Cook. This would begin Cook's modified obligations on August 28, 2022.

Iowa Code section 598.21C(5) states support "may be retroactively modified only from three months after the date the notice of the pending petition for modification is served on the opposing party." Iowa Code § 598.21C(5). Even so, "[t]he usage of the word 'may' in the foregoing statute gives the trial court discretion in deciding whether modified support payments should become effective from the date the action was filed or from the date of the modification order." *In re Marriage of Ober*, 538 N.W.2d 310, 313 (Iowa Ct. App. 1995). Additionally, "[t]here must be sufficient evidence in the record to support a finding support payments should be made retroactive." *Id.* We note that the release and satisfaction of

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failed to show that the amount under the guidelines would be unjust or inappropriate.

[6] The parties' child support guidelines mirror each other's numbers. The only difference for purposes of the guideline amount is that Cook asserts that he should receive a twenty percent credit if he is ordered to pay child support. But Cook would need 148–166 overnights per year with B.C., which the record does not support. Under the parenting schedule we have been provided, Cook has overnights five out of every fourteen days, two weeks during the summer visitation, and nine overnights during the specific holiday visitation schedule. While the parenting schedule does allow for overnights during spring break, this record does not contain information about how many overnights such break includes.

[7] We recognize that ordinarily we remand to the district court to recalculate child support. However, the unique circumstances of this record, wherein the parties stipulate to their incomes, does not require a recalculation of child support.

judgment concerning the contempt reflected that Cook had paid shared expenses through January 2023. We conclude child support payments should be retroactive from the month the district court's order of modification became effective, April 2023.

C. Shared Expenses and Uncovered Medical Expenses

The parties' original 2014 decree provided that all child-related expenses would be split equally. Both parties now agree that if Cook is ordered to pay child support, this provision of their original agreement should be eliminated. Because the child support guidelines account for all childcare expenses, the existence of this separate provision is not necessary. *See In re Marriage of Gordon*, 540 N.W.2d 289, 292 (Iowa Ct. App. 1995) ("[W]e believe expenses for clothes, school supplies and recreation activities are considered under the guidelines, and a separate support order covering such expenses is improper."). We eliminate the parties' responsibilities for the shared expenses, effective at the end of March 2023, the month before Cook's child support obligation is effective.

The parties also agree that Stoneking should be responsible for the first $250 in uncovered medical expenses, and all uncovered medical expenses incurred beyond that amount would be shared sixty-nine percent to Stoneking and thirty-one percent to Cook. *See* Iowa Ct. R. 9.12(5). We grant this request.

D. Appellate Attorney Fees

Both parties request appellate attorney fees. Iowa Code section 598.36 permits an award of attorney fees "in a proceeding for the modification of an order or decree." But an award of appellate attorney fees is granted at this court's discretion. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). To make

this determination, we consider "the needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal." *In re Marriage of Geil*, 509 N.W.2d 738, 743 (Iowa 1993).

Stoneking has been successful in this appeal, but the disparity in the parties' incomes is also relevant to our decision. A party's ability to pay their own fees is a consideration. *In re Marriage of Lalone*, 469 N.W.2d 695, 698 (Iowa 1991). Although Stoneking is the prevailing party in this appeal, in light of the parties' stipulated income, we determine she has the ability to pay her own attorney fees. Each party will be responsible for their appellate attorney fees.

IV. Conclusion

We determine the custodial parent met her burden for modification of the existing child support obligation. The district court decision requiring Stoneking to pay child support to Cook is vacated. Because Stoneking has physical care of B.C., Cook shall pay child support to Stoneking in the amount of $326.50 effective April 2023. The requirement that the parties share expenses equally is eliminated, effective at the end of March 2023. Effective April 2023, Stoneking will pay the first $250 in uncovered medical expenses. Uncovered medical expenses beyond this amount will be covered sixty-nine percent by Stoneking and thirty-one percent by Cook, effective April 2023. Each party will be responsible for their own appellate attorney fees. Court costs, if any, associated with this appeal are assessed to Cook. The case is remanded for entry of an order consistent with this opinion.

AFFIRMED AS MODIFIED AND REMANDED WITH INSTRUCTIONS.